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6 Attorneys for Creditor
US Bank Trust N.A., as Trustee of the
Bungalow Series F Trust, its successors and assigns

7 UNITED STATES BANKRUPTCY COURT

8 EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION

9 In re:) Case No.: 17-27346
10 Kenneth Roger Tabor)
11 Debtor.) MRG-1
12)
13) Chapter 13
14)
15) OPPOSITION TO MOTION TO CONFIRM
16) CHAPTER 13 PLAN
17)
18) 341(a) Hearing
19) DATE: January 4, 2018
20) TIME: 10:00 a.m.
21)
22) Confirmation Hearing
23) DATE: January 23, 2018
24) TIME: 3:00 p.m.
25) CTRM: 33
26) PLACE: U.S. Bankruptcy Court
27) 501 I Street
28) Sacramento, CA 95814
29)
30) Property: 10161 Major Rd., Yuba City, CA
31) 95991
32) Honorable Ronald H. Sargis
33)
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1 TO THE HONORABLE JUDGE RONALD H. SARGIS, UNITED STATES BANKRUPTCY
2 JUDGE, THE DEBTOR, HIS ATTORNEY OF RECORD AND THE CHAPTER 13 TRUSTEE,
3 DAVID CUSICK:

4 US Bank Trust N.A., as Trustee of the Bungalow Series F Trust (“**Creditor**”), a secured
5 creditor of Borrower, Ann T. Hill (the “**Borrower**”). Creditor holds a secured interest in the
6 Property commonly known as 10161 Major Rd., Yuba City, CA 95991 (the “**Property**”) and
7 hereby objects to the confirmation of Debtor Kenneth Roger Tabor’s (the “**Debtor**”) Chapter 13
8 Plan (the “**Plan**”) on the grounds that the Plan does not comply with the provisions of Chapter 13
9 of Title 11, United States Code, and with other applicable provisions of said Title 11. Debtor
10 indicates that the Property is Debtor’s principal residence.

I

STATEMENT OF FACTS

13 1. On or about January 28, 1999, the Borrower, for valuable consideration, made, executed
14 and delivered to New American Financial, Inc., a Note (the “**Note**”) with an original principal
15 balance in the amount of \$98,000.00 (the “**Loan**”).

16 2. Said Note is secured by a Deed of Trust (“**Deed of Trust**”), which encumbers the
17 Property dated January 28, 1999 and recorded February 5 1999, as Document No.: 19902076 in
18 the Official Records of Sutter County, California, naming New American Financial Inc., as the
19 Beneficiary.

20 3. Thereafter all beneficial interests in the Deed of Trust were assigned by Assignment of
21 Deed of Trust to Creditor

4. Creditor holds all right, title and interest in the Note and Deed of Trust.

1 5. On or about November 6, 2017, Debtor filed a voluntary Petition under Chapter 13 of the
2 Bankruptcy Code in the United States Bankruptcy Court, Eastern District of California, Case
3 No.: 17-27346 (the “**Instant Petition**”).

4 6. Debtor is not the Borrower under Creditor's Note or the obligor under the Deed of Trust.

5 7. Debtor and the Borrower were married on July 9, 2002.

6 8. Debtor filed a proposed Chapter 13 Plan in which he provides for Creditor as a Class 2
7 Claim in which he purports to pay Creditor's total claim over the life of the Plan, in the amount
8 of \$99,000, at an interest rate of 3%, with a monthly payment in the amount of \$2,604.00.

9. Creditor's Claim does not mature during the Chapter 13 Bankruptcy Petition.

10 10. The total amount owed to Creditor as of the Petition date is no less than approximately
11 \$101,855.31.

11. The total pre-petition arrears owed to Creditor totals no less than \$55,151.23.

13 12. The Debtors' Plan does not provide for payment of Creditor's post-petition monthly
14 mortgage payment or the arrears owed to Creditor in the amount of \$55,151.23.

II

ARGUMENT

17 Application of the provisions of *11 United States Code Section 1325* determines when a Plan
18 shall be confirmed by the Court. Based on the foregoing, as more fully detailed below, the Plan
19 cannot be confirmed as proposed.

A. IMPERMISSIBLY MODIFIES CREDITOR'S RIGHTS

11 U.S.C. §1322(b)(2)

The Plan modifies the rights of a creditor whose claim is secured only by a security interest in real property that is Debtor's principal residence in violation of 11 U.S.C. §1322(b)(2) by: (1) not providing for cure of Creditor's arrears and (2) not providing for ongoing payments to

1 Creditor. Debtor's Plan does not provide for Creditor's pre-petition arrears, or post-petition
2 monthly mortgage payment. Debtor instead attempts to modify or cram down Creditor's claim
3 by reducing the total payoff and interest rate. The Debtor lists the Property as Debtor's principal
4 residence, and thus Creditor's claim cannot be modified, therefore Debtor's Chapter 13 Plan
5 must provide for ongoing monthly payments to Creditor and the cure of Creditor's arrears.

6 **B. DOES NOT MEET FULL VALUE REQUIREMENT**

7 11 U.S.C. §1325(a)(5)(B)(ii)

8 The Debtor's Plan does not provide for cure of the pre-petition arrears owed to Creditor. The
9 pre-petition arrears owed to Creditor are no less than approximately \$55,151.23. Debtor's Plan
10 does not provide for payment of any arrears owed to Creditor. Accordingly, Debtor will be
11 required to amend his Plan to fully provide for the pre-petition arrears owed to Creditor. Since
12 Debtor's Plan does not provide for cure of the default of the pre-petition arrears owed to
13 Creditor, the Plan does not meet the full value requirement and fails to satisfy 11 U.S.C.
14 §1325(a)(5)(B)(ii).

15 **C. PROMPT CURE OF PRE-PETITION ARREARS**

16 11 U.S.C. §1322 (d)

17 The pre-petition arrears owed to Creditor are no less than \$55,151.23. In order to cure the
18 Creditor's pre-petition arrears in sixty (60) months as proposed, Debtor's monthly plan payment
19 to Creditor must total no less than \$919.19. Debtor's Plan does not provide for payment of
20 Creditor's arrears in any amount. Therefore, Debtor's Plan fails to provide for prompt cure of
21 Creditor's pre-petition arrears.

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1 WHEREFORE, Creditor objects to confirmation of the Plan and requests as follows:

2 a. The Plan be denied confirmation and the case be dismissed.

3 DATED: January 2, 2018

THE LAW OFFICES OF MICHELLE GHIDOTTI

4 By: /s/ Kristin A. Zilberstein, Esq.

5 Kristin A. Zilberstein, Esq.

6 Attorneys for Creditor: NP162, LLC

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